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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JAN 10 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE APPLICATIONS OF:

TRINITY BROADCASTING OF FLORIDA, INC.
and
GLENDALE BROADCASTING COMPANY
Miami, Florida

MM DOCKET NO. 93-75

DATE OF HEARING: December 9, 1993

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FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

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IN THE MATTER OF:

TRINITY BROADCASTING OF FLORIDA, INC.
and
GLENDALE BROADCASTING COMPANY

Miami, Florida

The above-entitled matter came on for hearing pursuant to Notice before Judge Joseph Chachkin, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., on Thursday, December 9, 1993, at 9:13 a.m.

APPEARANCES:

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FREE STATE REPORTING, INC.
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	By Mr. Schonman	1739
	Hearing Began: 9:13 a.m.	Hearing Ended: 4:02 p.m.
	Lunch Break Began: 12:30 p.m.	Lunch Break Ended: 1:37 p.m.

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P R O C E E D I N G S

2 JUDGE CHACHKIN: All right, on the record.

3 Mr. Schonman, please continue with your cross examination.

4 MR. SCHONMAN: Thank you, Your Honor. I'd like to
5 move to Bureau Exhibit Number 149, please.

6 JUDGE CHACHKIN: What number again?

7 MR. SCHONMAN: One-forty-nine. And that's an
8 application of NMTV for a new low power station on Channel 56
9 in Fresno, California.

10 MR. EMMONS: Excuse me. May I have one second?
11 Thank you.

12 BY MR. SCHONMAN:

13 Q Mrs. Duff, do you have that before you?

14 A Yes.

15 Q Can you tell me why NMTV filed a low power
16 application for a station in Fresno, California?

17 A NMTV had picked out several markets that we thought
18 would be good. In other words, Fresno, I knew, was an area
19 where the, the programs were needed, and we had an opportunity
20 to file there in the window. I'm fairly familiar with Fresno
21 myself. It's a region that I have been to and I know it would
22 serve the community, and also knew that our programming would
23 be -- people there would be receptive to our programming.

24 Q Would you turn to page 13 of this application? And
25 that's identified at the top as Exhibit 1. And there are

1 three other communities listed, Waldorf, Maryland,
2 Douglasville, Georgia, and San Diego, California.

3 A Um-hum.

4 Q Are those communities for which NMTV also filed
5 applications for low power stations?

6 A I believe so.

7 Q Why did NMTV file applications for those
8 communities?

9 A Waldorf, Maryland, actually would have served parts
10 of Washington, I believe. And Douglasville is actually close
11 to the City of Atlanta. And, of course, San Diego is a market
12 that is very dear to my heart. I used to live there, my
13 children live there. As far as I was concerned, I thought
14 these were very key markets and I thought it would be
15 advantageous for a national minority to serve those
16 communities.

17 Q You alone made the decision to file applications for
18 these four communities?

19 A I made the final decision based on what engineering
20 information I had gathered from our consultant and the fact
21 that there was available frequency, available sites, and
22 that's the criteria. Early on, we had made the
23 determination -- When I say we, I mean NMTV's board -- that we
24 would try to file for capital cities and also for the largest
25 markets, and I believe that the criteria here meets that

1 because Washington, D.C., of course, is the capital of our
2 country. And Atlanta, one of the largest cities in the United
3 States. And, of course, San Diego, a very large city.

4 Q So why is it that, that the application was filed
5 for Waldorf? I, I didn't understand your answer.

6 A It's close to Washington, D.C., I believe.

7 JUDGE CHACHKIN: With low power you expect to get
8 into Washington, D.C.?

9 MRS. DUFF: Well, the outskirts with a low power
10 station. Knowing that there's no way that we're going to get
11 into Washington, D.C., proper, at least we'll get somewhere
12 near the, the suburbs. And that's what my engineer told me,
13 that, you know, it would cover part of the, you know, a suburb
14 of Washington, D.C.

15 BY MR. SCHONMAN:

16 Q Who's the engineer that you're referring to?

17 A At that time I believe, I believe it was Kevin --
18 Smith and Powstenko. I'm not sure which one of the engineers.
19 They had more than one engineer at Smith and Powstenko.

20 Q That's an engineering consulting firm?

21 A Yes.

22 Q Kevin Fisher works there?

23 A He does. And then Neil Smith, also.

24 Q I see. And had that firm performed services for TBN
25 for quite a number of years?

1 A You know, I'm not -- I think they had.

2 Q So in order -- I'd like to understand how the
3 process worked. You, you retained Smith and Powstenko to look
4 into these communities?

5 A I beg your pardon?

6 Q Did you retain Smith and Powstenko to examine the,
7 the engineering for these communities?

8 A Yes.

9 Q And then based on the results that Smith and
10 Powstenko provided to you, you made the determination to file
11 the applications for them?

12 A They would identify where the station could be
13 located, then we would also research to see if there was a
14 site available. And based on that, on the site availability,
15 that was very important, also, in making the decision.

16 Q I see. To your knowledge, did TBN file any low
17 power applications during this window?

18 A I don't believe so. This was back in -- I don't
19 believe they did. They possibly would have filed modification
20 applications, but I don't believe for a new market they filed
21 one.

22 Q Mrs. Duff, with respect to TBN's modifications --
23 modification applications which were filed during this window,
24 who performed the engineering services for those applications?

25 A It would be Ben Miller, and also he would consult

1 with Smith and Powstenko as well.

2 Q Did NMTV rely on Ben Miller at all for the, for the
3 applications for Fresno, Waldorf, Douglasville, or San Diego?

4 A I don't believe so.

5 Q I'd like to turn to Bureau Exhibit Number 150.

6 Actually, before we move on, Mrs. Duff, I'd like to go back to
7 the discussion about the low power stations that we were just
8 talking about. Were there communities which NMTV considered
9 filing for but ultimately rejected?

10 A Yes.

11 Q What communities were those?

12 A Oh, my. I just -- I couldn't be -- wouldn't be able
13 to tell you. When you say rejected, you mean because there
14 wasn't a frequency available or --

15 Q Communities that you considered filing for but when
16 the opportunity came to file you did not file applications for
17 those communities.

18 A There's any number of them. We would go down a list
19 and -- starting with the largest markets and just, you know,
20 it would be a game of elimination, to see what was actually
21 available.

22 Q Can you remember any communities?

23 A Detroit probably.

24 Q Why didn't you file for Detroit?

25 A There wasn't any available frequency at the time

1 that we, that we filed.

2 Q When you say that we went down the list of the
3 communities, who is the we that you're referring to?

4 A The consulting engineer. Actually, what -- The
5 second criteria was the site availability, and I believe with
6 Detroit it was -- we didn't find an available site. There had
7 to be, you know, we couldn't have short spacing and that type
8 of thing, so it was a very difficult market. And a lot of the
9 other areas, too, like San Francisco, we had -- we looked --
10 we always looked, you know, for the larger markets and places
11 like Boston, New York. We always looked at -- We'd just go
12 through the list of cities ranked by market size and -- to see
13 what was still available. Hartford, Connecticut. I remember
14 we approached those markets.

15 Q Of all the communities that you considered, were
16 there -- I, I have to assume these communities were not
17 receiving TBN programming at that time?

18 A That wasn't necessarily the criteria. If in fact --
19 Because TBN has a lot of cable carriage, too. There are
20 several -- I should say many cable systems across the country
21 that carry the satellite feed, so it wouldn't necessarily mean
22 that we wouldn't go into a market just because TBN had some
23 sort of exposure there.

24 Q Did NMTV ever have a station in a community that was
25 already served by TBN programming?

1 A By cable, yes.

2 Q Where was that?

3 A Well, Detroit. Okay, now, that's, that's not an MTV
4 station. I'm trying to think of -- I know that there are -- I
5 just -- Off the top of my head, I can't, I can't really put my
6 finger on one -- If I thought about it a little while, I'm
7 sure I'd be able to come up with --

8 JUDGE CHACHKIN: But insofar as off the air --

9 MRS. DUFF: Not over the air. It would be cable
10 exposure.

11 BY MR. SCHONMAN:

12 Q Well, at the time NMTV filed for Fresno, TBN
13 programming was not being provided to Fresno. Is that
14 correct?

15 A I'm sorry, if -- Yes, that's one of the -- But it's
16 a little bit -- That situation there was -- TBN was on a, a
17 different station there, two hours of programming, I believe,
18 in Fresno. So that's a little bit different situation.

19 Q Waldorf, Maryland, TBN programming in Waldorf?

20 A Not to my knowledge.

21 Q How about Douglasville, Georgia, was there TBN
22 programming there when NMTV filed an application?

23 A Not to my knowledge.

24 Q Same question for San Diego.

25 A There was a small amount of programming on cable in

1 San Diego, I believe, at the time that we filed.

2 Q All right, we're on Exhibit 150, and this is a
3 special meeting of Trinity Broadcasting Network held on
4 July 7, 1987. And in the fourth paragraph down there's a
5 reference to Set Free Ministries. Do you see that?

6 A Yes.

7 Q What is Set Free Ministries?

8 A That is a ministry that is a part of -- That's Phil
9 Aguilar's ministry. At that time, it was a church which also
10 was involved in helping the, the poor. They had a lot of
11 outreach into the community and that particular organization.

12 Q Now, the Phil Aguilar that -- I'm sorry, were you
13 finished with your answer?

14 A Yeah. I was just going to say Phil was later on,
15 you know, elected to the board --

16 Q I see. I just wanted to make sure that was the same
17 Phil Aguilar who would later become a, a member of NMTV's
18 board.

19 A That's correct.

20 Q Thank you. Let's move to Bureau Exhibit Number 151,
21 and this is a return of organization exempt from income tax
22 Form 990 for Translator TV, Inc., for the year 1986.
23 Mrs. Duff, the -- this form that was filed with the federal
24 government indicates that it's being filed on behalf of
25 Translator TV, Inc. Do you see that?

1 A Yes.

2 Q Now, this form on page 4 indicates a date of July
3 10, 1987, at the bottom. Do you see that?

4 A Yes.

5 Q By, by July 10, 1987, hadn't the name of the
6 corporation been changed to NMTV?

7 A Yes, it had.

8 Q Are you able to explain why this, this form was
9 filed in the name of Translator TV, Inc.?

10 A No, I can't explain that.

11 Q Do you recall examining this document at the time it
12 was prepared?

13 A No, I do not remember examining it at the time it
14 was prepared.

15 Q Do you remember ever seeing this form at any time
16 up -- before today?

17 A It would be my practice to, to see the forms, but I
18 can't say that I remember it.

19 Q Do you recall any discussion among any members of
20 NMTV's board about a negative fund balance of almost \$445,000?

21 A No, sir.

22 Q Now, at the time this was filed, was Reverend
23 Espinoza the CFO for NMTV?

24 A Yes.

25 Q Do you know if a copy of this application was sent

1 to Mr. Espinoza before it was filed with the federal
2 government?

3 A I did not send him a copy.

4 Q Do you know if he was sent a copy by anyone?

5 A No, I don't.

6 Q I would assume then, since there were no discussions
7 or you can't recall any discussions about the negative fund
8 balance, that no red flags went up among members of NMTV's
9 board about this negative fund balance?

10 A No, sir.

11 Q Let's move on to Bureau Exhibit Number 152, and this
12 is an invoice from May and Dunne, and we're now up to July 14,
13 1987. And there is a reference there as well to a National
14 Minority TV. And as I did yesterday, I'll ask you again, do
15 you know why NMTV is identified in this invoice when the
16 invoice was sent to Trinity Broadcasting Network?

17 A Basically, I -- my own recollection is that it was
18 a -- I guess a time-saving cost factor for May and Dunne to
19 send this bill at, you know, as a part of the overall bill for
20 TBN since they knew that I reviewed all the bills anyway.

21 Q Moving on to Bureau Exhibit Number 155, that's an
22 invoice from May and Dunne dated August 17th, 1987, and NMTV
23 is identified there and the bill was sent to Trinity
24 Broadcasting Network. So I have the same question, do you
25 know why this bill is being sent to, being sent to Trinity?

1 A Would it be proper for me to say ditto?

2 Q Yes.

3 A Thank you.

4 Q Let's move on to Bureau Exhibit Number 156, and
5 that's a financial report for December 31, 1986, and I'd like
6 to direct your attention to page 8. Mrs. Duff, do you recall
7 seeing this document at about the time it was prepared?

8 A It would have been my practice to review these
9 reports at the board meetings, but I, I don't have a specific
10 recollection, no.

11 Q Do you recall any discussion about the negative fund
12 balance on page 8 for Translator TV, Inc.?

13 A No, sir.

14 Q Do you have any explanation as to why no red flags
15 went up about that negative fund balance in the amount of
16 \$444,946?

17 A I think I explained during one of the questions
18 yesterday that the memo that was sent by Bill Phipps back in
19 1981 was the catalyst that started this whole process of
20 erroneously allocating all of TBN's, Translator's, and their
21 expenses to, to Translator TV, and that was an error which was
22 corrected in 1987. And you'll notice when we get to the
23 balance sheets in 1988 that there would be a zero.

24 Q I understand. Now, yesterday you testified that one
25 of the reasons why you had not noticed a negative fund balance

1 in one of the previous financial statements was that the
2 amount was rather insignificant. But now we're dealing with
3 an amount which is almost a half million dollars. Would the
4 same reasoning apply?

5 A I think it was just probably inattention to
6 Translator since at this time still there wasn't -- You see
7 across the top it's zero.

8 Q Across the top of what page?

9 A Of, of the sheet that we're looking at, Translator
10 at the top, it's a zero.

11 Q Um-hum.

12 A Page 8.

13 Q All right, let's move on to Bureau Exhibit
14 Number 157, and that's a special meeting of Trinity
15 Broadcasting Network, August 28, 1987. And this is at a time
16 when -- after which you had resigned from the board. Is that
17 correct?

18 A Yes.

19 Q And you were in attendance at that meeting, weren't
20 you?

21 A Yes.

22 Q And that's identified in the first paragraph?

23 A That's correct.

24 Q Why were you in attendance at this meeting?

25 A The only time I attended the TBN board meetings were

1 upon the special request of Mr. Crouch and there was some
2 reason why he wanted me to specifically be at that meeting,
3 'cause at that time I was his assistant.

4 Q Between the time you resigned from TBN's board and
5 the time of this August 28th, 1987, meeting, were there any
6 board meetings at TBN that you didn't attend?

7 A Oh, yes.

8 Q How many?

9 A I can't tell you how many, but it was -- They had
10 frequent meetings, and usually the meetings were long and
11 involved and they would require me to be away from my desk for
12 three, four hours at a time.

13 Q These were meetings where very important matters
14 were discussed?

15 A Yes. They were, they were matters that sometimes
16 did not affect my responsibilities at all. But any time that
17 Mr. Crouch had something that was going on in a meeting that I
18 needed to be of assistance to him, then he would make a
19 special request and ask me to come.

20 Q Were there many --

21 JUDGE CHACHKIN: Were there formal meetings which
22 you did not attend? Which is, which is -- In which there have
23 been minutes made?

24 MRS. DUFF: I don't think I understand what you mean
25 by formal.

1 JUDGE CHACHKIN: Well, I'm talking about a meeting
2 in which we have minutes showing what took place at that
3 meeting. Is there any of those formal meetings which you did
4 not attend of TBN?

5 MRS. DUFF: Not without looking at minutes, I
6 wouldn't be able to tell you. I think they took minutes at
7 most of the meetings. That was -- I, I think they did. I did
8 attend all of the annual meetings, obviously, because I was
9 Mr. Crouch's assistant and I was a department head which
10 required my presence at all the annual meetings. But I
11 definitely did not attend the -- every meeting of Trinity
12 Broadcasting Network after I resigned from the board. Many
13 meetings I did not attend.

14 BY MR. SCHONMAN:

15 Q Mrs. Duff, I'd like to direct your attention to
16 Bureau Exhibit Number 159, and that's another invoice from the
17 law firm of May and Dunne, but this one is dated
18 September 8th, 1987. This is an invoice directed to Trinity
19 Broadcasting Network and includes a billing for services
20 rendered to NMTV, and I have the same question, do you know
21 why this bill was directed to TBN when it included services
22 rendered to NMTV?

23 A Would it be proper for me to say ditto here?

24 Q Yes.

25 A I appreciate that. Thank you.

1 Q That's your answer?

2 A Thank you.

3 Q Turning to Bureau Exhibit Number 161, this is a
4 letter on May and Dunne letterhead dated October 9, 1987,
5 involving an agreement in principle to purchase the Portland,
6 Oregon, station, Channel 24. Would you like to take a moment
7 to look at that?

8 A Yes.

9 Q Mrs. Duff, how did Mr. Colby May come to prepare
10 this letter?

11 A Upon my instruction.

12 Q Did you read this letter before it was sent to
13 Mr. Vandaveer in Los Angeles?

14 A I believe I did.

15 Q Now, there's a reference three lines from the top
16 where Colby May is identifying NMTV, and it says, "NMTV, which
17 is affiliated with the Trinity Broadcasting Network and owns
18 the Odessa station." Do you know why, do you know why Mr. May
19 found it necessary or important to state that NMTV was
20 affiliated with TBN?

21 A Because the -- Mr. Vandaveer had approached me
22 because he remembered me from the dealings that he had with
23 TBN, and this was a form of reference to the fact that
24 originally that Trinity had worked with, with Mr. Vandaveer.
25 And Mr. May wanted to make sure that he understood that he was

1 not dealing with, with TBN 'cause that was his frame of
2 reference.

3 Q What was the relationship between Mr. Vandaveer and
4 Trinity Broadcasting Network, if any?

5 A There was a -- There was some serious negotiation
6 between Mr. Vandaveer's associate, Ted Minsky, back in --
7 probably about four or five years prior to this time that
8 Trinity almost bought a property in Seattle. There was -- I
9 believe that there was a -- even a buy-out with some property
10 there that we were interested in, at that time Trinity was
11 interested in. And there were some heavy negotiations, and so
12 they had dealt a great deal with Trinity and it was that
13 reference that he remembered that I was the one that was
14 involved. I was Mr. Crouch's assistant at that time and he
15 remembered me, so he called me thinking that Trinity was going
16 to be interested in the purchase of this station, when
17 actually National Minority was the one that was interested.
18 And he wanted to make that clear.

19 Q Trinity was not interested?

20 A Trinity was not interested in Portland, no.

21 Q Why is that?

22 A At that time, we -- Trinity already had the number
23 of stations that -- stations that they could have. This was
24 after NMTV had already bought the Odessa station.

25 Q So it wasn't for lack of interest in reaching the

1 Portland market that, that TBN didn't enter into an
2 arrangement to acquire the, the permit. It was because of the
3 full complement of stations that TBN already owned. Is that
4 correct?

5 A That was, that was one -- Yes.

6 Q Now, in this line, the third line from the top,
7 where it says that NMTV is affiliated with Trinity
8 Broadcasting Network, did NMTV in fact at that time have an
9 affiliation agreement with TBN?

10 A Yes, we had a -- Odessa had an affiliation
11 agreement, an air-time agreement.

12 Q Is --

13 A Or --

14 Q Is that what Mr. Colby May means by the word
15 "affiliated with TBN"?

16 A Right. I'm not positive of the, the actual -- the
17 date of the air-time agreement, but we had commitments, you
18 know, to -- I'm not sure of the date, but there was already
19 that commitment that we were going to, to have an agreement.
20 I'm, I'm not positive of the actual date of the agreement.

21 Q Well --

22 A The air-time agreement.

23 Q You just testified that there was a commitment, we
24 had already agreed, and when you say we, who, who's the we?

25 A NMTV.

1 Q NMTV?

2 A NMTV. Had agreed --

3 Q Had already agreed with -- I'm sorry, you go ahead.

4 A I was just trying to make it clear that when we
5 bought the Odessa station, that was a commitment to an
6 affiliation agreement with, with TBN. Because when we filed
7 that application, we had the intention of carrying the -- NMTV
8 had the intention of carrying Trinity Broadcasting, and there
9 was a commitment there for an air-time arrangement, air-time
10 agreement.

11 Q As of October 9, 1987, that commitment you're
12 referring to had not been reduced to writing, had it?

13 A That's why I wanted to clarify it, that if it wasn't
14 reduced to writing there was still a commitment to enter into
15 an air-time agreement.

16 JUDGE CHACHKIN: Let me ask you this. Were there
17 any other sources of religious programming besides TBN when
18 NMTV was established?

19 MRS. DUFF: Yes, sir, there were other sources but I
20 --

21 JUDGE CHACHKIN: What other sources were there?

22 MRS. DUFF: Not that many.

23 JUDGE CHACHKIN: But there were some?

24 MRS. DUFF: There were, there were some, but I felt
25 that Trinity's programs --

1 JUDGE CHACHKIN: Did you explore any other sources
2 to see -- Did you make any -- Did you talk to anybody from any
3 other religious source besides TBN before agreeing to
4 affiliate with TBN?

5 MRS. DUFF: TBN has the largest number of available
6 programs. What, what TBN has available is not just TBN. They
7 have national ministries that buy time from them, which means
8 that I had "700 Club." I had Robert Schuller. I had the top
9 people already in a package and I didn't have to go and work
10 individually with, with different program producers. And this
11 way, it was a package deal that I knew was -- would get
12 response from the community.

13 And to me, this was the best way to go.

14 JUDGE CHACHKIN: Did you make any effort to find out
15 whether you could have gotten a better deal from any other
16 religious sources, from any other programming? Make any
17 effort at all?

18 MRS. DUFF: With my long experience dealing with
19 program sources and knowing what the Arbitron ratings were,
20 even in comparison with TBN, I knew that TBN's record was far
21 above any other programming source. So I didn't really feel
22 like I needed to go out and shop any other programming source,
23 because I had inside information. I also had the surveys
24 which were provided by Arbitron as to which religious
25 programming was the most popular. And TBN is more than three

1 times -- has more than three times the rating of any other
2 religious network that is available.

3 JUDGE CHACHKIN: Did you, did you, did you have, did
4 you have Arbitron in Portland? Did you look at Arbitron data
5 in Portland as to which religious programming was most
6 popular?

7 MRS. DUFF: To my knowledge, I don't know if
8 Portland had another religious programming source in Portland.
9 I do know that Trinity was carried in Portland on a cable
10 system before NMTV went on the air and the responses were
11 good. And in actuality, NMTV got the benefit of the monies
12 that were coming in to the station from those zip codes in
13 Portland, even though it wasn't even our station, because TBN
14 was on cable there. I got the credit for the money that was
15 already coming in, and I thought that -- I don't know how you
16 can beat that kind of a deal.

17 JUDGE CHACHKIN: But the answer is you did not
18 examine -- you did not talk to any other programs, religious
19 programs?

20 MRS. DUFF: No, sir. I felt that I had the best
21 programming source.

22 JUDGE CHACHKIN: And you didn't have any Arbitron
23 data from Portland as to religious programming? Or from
24 Odessa, for that matter? Did you examine any Arbitron data in
25 Odessa as to religious programming?

1 MRS. DUFF: No, I didn't for, for Odessa.

2 JUDGE CHACHKIN: Go ahead, Counsel.

3 BY MR. SCHONMAN:

4 Q Mrs. Duff, in this letter, this October 9, 1987,
5 letter, the, the second paragraph which has the, the number
6 one next to it refers to an amount of \$500,000 which NMTV was
7 proposing to pay the permit holder at that time.

8 A Yes.

9 Q Where was NMTV going to come up with \$500,000 to
10 purchase the Portland permit?

11 A We had a commitment from Trinity to assist our
12 minority organization to -- for the purchase.

13 Q TBN was going to loan NMTV the money?

14 A Yes.

15 Q Was that reduced to writing?

16 A I believe that there was a resolution, a board
17 resolution.

18 Q Well, were the terms of this loan reduced to
19 writing?

20 A They were -- The terms were spelled out later, but
21 not at the time that this agreement was entered into.

22 Q How much later, Mrs. Duff?

23 A I can't remember exactly.

24 JUDGE CHACHKIN: Do we have such an agreement
25 spelling out the terms of the loan?